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REMARKS

Claim 2 is rejected, under 35 U.S.C. § 103, as being unpatentable over the admitted prior art in paragraphs [012] and [013] of the specification in view of Wozniak '925 (United States Patent No. 6,278,925). The Applicant acknowledges and respectfully traverses the raised obviousness rejection in view of the above amendments and the following remarks.

Paragraph [013] of the specification states that "[t]he devices for evaluating vehicle, driving and operating parameters of a vehicle that are known from the state of the art, which select and adjust a gear ratio of a transmission by means of a microprocessor in accordance with predetermined algorithms, parameters, or characteristic diagrams . . .". This paragraph further states that such prior art devices have the disadvantage "that they do not take into consideration among the influence parameters any of the changes subjected to durability or service life. Gear selection thus occurs based on evaluation criteria that refer to the new condition, and not the changes in the transmission and on the vehicle caused by the operation".

The next paragraph of the specification further states that

[I]t is the object of the present invention to outline a device for evaluating vehicle, driving and operating parameters of a vehicle, which evaluates a gear ratio of a transmission according to predetermined algorithms, parameters, or characteristic diagrams, while taking into consideration specific transmission criteria and parameters; selects and adjusts the same by means of a microprocessor. The gear selection occurs, in particular, based on the evaluation criteria, which take into consideration the changes in the transmission and on the vehicle caused by the operation.

It is respectfully submitted that the admitted prior art, in paragraphs [012] and [013] of the application, relates to a device which evaluates certain parameters in selecting gear ratios and includes a microprocessor, which determines the acceleration of the vehicle by calculating the change in the driving speed using algorithms, diagrams and related parameters such as the speed of a power train including a motor and transmission. The acceleration of the vehicle

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is then used to determine the gears or gear ratios to be engaged or disengaged. In other words, only parameters related to acceleration are considered when determining when to engage or disengage gears or gear ratios. According, it is respectfully submitted that such teaching is distinctly different from the presently claimed invention.

Turning now to Wozniak '925, the Applicant acknowledges that this reference relates to determining the incipient positive torque in a powertrain, i.e., the threshold of a power-on condition. This citation further teaches, in column 1, lines 27-30, that "... variations in vehicle weight, the gear ration of the axle and *performance variations associated with the service life of the powertrain affect the power-on threshold point*, and in that way influence whether the calibrated scalar torque estimate is sufficiently high to permit federal testing to occur". (Emphasis added). In view of such teaching, the Applicant respectfully submits that one skilled in the art, in view of Wozniak '925, would merely use a microprocessor to evaluate *performance variations associated with the service life of the powertrain affecting the power-on threshold point* of the vehicle, and not consider "at least one of an actuation frequency of an actuator and a service life of a gear to be engaged" when controlling the drivetrain of a vehicle. As such, the Applicant respectfully submits that the combination of Wozniak '925 with the admitted prior art, discussed above, still fails to in any way teach, suggest or disclose the presently claimed invention--Wozniak '925 merely teaches that performance variations associated with the service life of the powertrain may affect the power-on threshold point of the vehicle.

In order to further distinguish the present invention from the applied art, each of independent claims 3, 7 and 8 now recite the features of the microprocessor (8) being coupled to a drive train (1) of a vehicle via an engine actuating element (9), a clutch actuating element (10) and a transmission actuating element (11) and "the operating parameters (5), the driving parameters (6) and the vehicle and transmission parameters (7) including at least one of an actuation frequency of an actuator and a service life of a gear to be engaged."

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Such features are believed to clearly and patentably distinguish the presently claimed invention from all of the art of record, including the applied art.

If any further amendment to this application is believed necessary to advance prosecution and place this case in allowable form, the Examiner is courteously solicited to contact the undersigned representative of the Applicant to discuss the same.

In view of the above amendments and remarks, it is respectfully submitted that the raised rejection should be withdrawn at this time. If the Examiner disagrees with the Applicant's view concerning the withdrawal of the outstanding rejection or applicability of the admitted prior art in the specification and/or the Wozniak '925 reference, the Applicant respectfully requests the Examiner to indicate the specific passage or passages, or the drawing or drawings, which contain the necessary teaching, suggestion and/or disclosure required by case law. As such teaching, suggestion and/or disclosure is not present in the applied references, the raised rejection should be withdrawn at this time. Alternatively, if the Examiner is relying on his/her expertise in this field, the Applicant respectfully requests the Examiner to enter an affidavit substantiating the Examiner's position so that suitable contradictory evidence can be entered in this case by the Applicant.

In view of the foregoing, it is respectfully submitted that the raised rejection(s) should be withdrawn and this application is now placed in a condition for allowance. Action to that end, in the form of an early Notice of Allowance, is courteously solicited by the Applicant at this time.

The Applicant respectfully requests that any outstanding objection(s) or requirement(s), as to the form of this application, be held in abeyance until allowable subject matter is indicated for this case.

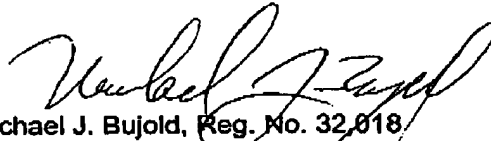
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In the event that there are any fee deficiencies or additional fees are payable, please charge the same or credit any overpayment to our Deposit Account (Account No. 04-0213).

Respectfully submitted,



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